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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,742	02/09/2004	Ashley M. Classen	15181.027	9209
42922	7590	09/06/2006	EXAMINER	
WHITAKER, CHALK, SWINDLE & SAWYER, LLP 3500 CITY CENTER TOWER II 301 COMMERCE STREET FORT WORTH, TX 76102-4186			PEZZUTO, ROBERT ERIC	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary for Applications Under Accelerated Examination</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/774,742	CLASSEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Robert Pezzuto	3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Since this application has been granted special status under the accelerated examination program,  
 NO extensions of time under 37 CFR 1.136(a) will be permitted and a SHORTENED STATUTORY PERIOD FOR  
 REPLY IS SET TO EXPIRE:

ONE MONTH OR THIRTY (30) DAYS, WHICHEVER IS LONGER,  
 FROM THE MAILING DATE OF THIS COMMUNICATION – if this is a non-final action or a Quayle action.  
 (Examiner: For FINAL actions, please use PTOL-326.)

The objective of the accelerated examination program is to complete the examination of an application within twelve months from the filing date of the application. Any reply must be filed electronically via EFS-Web so that the papers will be expeditiously processed and considered. If the reply is not filed electronically via EFS-Web, the final disposition of the application may occur later than twelve months from the filing of the application.

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 3) Claim(s) 1-70 is/are pending in the application.
- 3a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 4) Claim(s) \_\_\_\_ is/are allowed.
- 5) Claim(s) \_\_\_\_ is/are rejected.
- 6) Claim(s) \_\_\_\_ is/are objected to.
- 7) Claim(s) 1-70 are subject to restriction and/or election requirement.

#### Application Papers

- 8) The specification is objected to by the Examiner.
- 9) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 10) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 11) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>20040209</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: ____.

## DETAILED ACTION

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-62, drawn to a method of and apparatus for reducing chronic pain, classified in class 607, subclass 4.
- II. Claims 63-70, drawn to a radio frequency cannula, classified in class 600 subclass 23.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have both different modes of operations and effects.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required

because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Charles Gunter, Jr. on September 1, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication should be directed to Robert Pezzuto at telephone number (571) 272-6996.



Robert E Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766